

EXHIBIT 2

From: [Kraig Kast](#)
To: ["Kevin P. McCulloch"](#)
Subject: RE: Atherton Use of Copyrighted Images
Date: Wednesday, July 13, 2011 11:18:02 AM

You are invited to waste your time and money, even if you get a charging order you will not collect anything because of the way this company is structured. As you have taken this tact there will be no further communication.

Kraig R. Kast
Atherton Trust

From: Kevin P. McCulloch [mailto:kmcculloch@nelsonmcculloch.com]
Sent: Wednesday, July 13, 2011 8:11 AM
To: 'Kraig Kast'
Subject: RE: Atherton Use of Copyrighted Images

Mr. Kast,

Thank you for confirming that these images will be taken down from your site. When that occurs, please send me confirmation.

As to the rest of your email, I must take issue with your understanding of the nature and seriousness of this issue.

As my letter explained, merely removing my clients' images from your website does not fully resolve the matter. While that is an important first step, it does not fully resolve the issue as it fails to address the damages suffered by my client and its costs and expenses in pursuing this matter.

The unauthorized and infringing use of copyrighted material is a serious matter and my client must and intends to take all necessary legal steps to protect its copyrights. Copyrighted material is considered property, and licensing the use of that property is the foundation our client's business and livelihood. So, as I am sure you can understand, my client cannot tolerate the unauthorized use of its copyrighted images as such use implicates the value of the images and limits its licensing opportunities. Moreover, policing and tracking down unauthorized uses of my client's images is a burdensome and expensive process. Simply removing the image from your site does not resolve the damage that already has been caused and the expenses that already have been incurred.

Regardless of whether Atherton Trust "authorized" these images to be used and displayed on its website, the fact remains that Atherton did display these images on its website. It is settled law that this sort of unauthorized use is copyright infringement as the copyright owner has the "exclusive right" to control the use, display, and exploitation of his or her creative works, 17 U.S.C. § 106, and thus the U.S. Supreme Court has held that "*anyone . . . who trespasses into [the copyright owner's] exclusive domain by using or authorizing the use of the copyrighted work in one of the five ways set forth in the statute, 'is an infringer of the copyright.'*" *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 432-33 (1984) (quoting 17 U.S.C. § 501).

As for your contention that your web designer mistakenly posted these images on Atherton's website, I cannot comment on that issue because you have provided absolutely nothing to support that position. In any event, even if I were to accept your explanation (arguendo only), Atherton Trust still would be liable for copyright infringement. It may be the case that Atherton, in turn, has claims against its web designer, either under its contract with that web designer for indemnification or otherwise, but that is for you to determine, not me. As far as the law is concerned, my client's claims lie against Atherton Trust.

Moreover, your explanation raises very serious questions about the manner in which your web designer runs its business, as copying other people's creative works, even for internal use or "beta-testing" purposes, is illegal unless you obtain prior permission.

As my letter explained, my client is entitled to recover damages caused by your infringement, including the significant expenses it already has incurred in tracking this matter down and pursuing this matter. In fact, the more time that we spend debating this matter, the more costs that are incurred by my client and the more costly it will be to settle this matter. My client has no intention of ignoring this unauthorized use, and my client certainly will not bear the costs of forcing you to comply with the law. Even accepting your explanation, certainly you can agree that my client is the victim here and did absolutely nothing wrong. My client thus should not have to bear the costly burden of cleaning up this problem, and the law makes clear that it does not have to bear such costs.

Although we are willing to work with you to avoid the need to initiate litigation, our willingness to work with you is dependent upon reaching a mutually agreeable resolution of this matter in a timely fashion. As I am sure you can understand, our client is unwilling to incur mounting legal expenses for no reason. If we cannot reach a mutually agreeable resolution, we will need to proceed with litigation as soon as possible.

Regards,

Kevin P. McCulloch
Attorney at Law
Nelson & McCulloch LLP
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405 Lexington Avenue, 26th Floor
New York, New York 10174

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From: Kraig Kast [mailto:kraig.kast@athertontrust.com]
Sent: Tuesday, July 12, 2011 7:44 PM
To: 'Kevin P. McCulloch'
Subject: RE: Atherton Use of Copyrighted Images

To whom it may concern:

These images were not authorized by Atherton Trust to be used during the development of our website, they were apparently used by the company that is updating our website and were not intended to be published. I have instructed the website developer to immediately delete these images. All images on our site were to have been purchased from authorized image services such as Corbis. We regret any inconvenience or confusion that may have occurred.

Kraig Kast
Managing Trustee
Atherton Trust

From: Kevin P. McCulloch [mailto:kmcculloch@nelsonmcculloch.com]
Sent: Tuesday, July 12, 2011 4:20 PM
To: information@athertontrust.com
Cc: 'Kevin P. McCulloch'
Subject: Atherton Use of Copyrighted Images

To Whom It May Concern:

I represent a stock photography distributor called Erickson Productions, Inc. It has come to our attention that Atherton Trust is using three copyrighted images owned by Erickson Productions without a license. This conduct constitutes unlawful copyright infringement. Please see the attached letter regarding this matter.

If this is not the appropriate contact address for this legal matter, please forward this communication to the appropriate person and tell me to whom I should direct future correspondence.

Thank you.

Kevin P. McCulloch
Attorney at Law

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